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6 **UNITED STATES BANKRUPTCY COURT**  
7 **IN AND FOR THE DISTRICT OF ARIZONA**  
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9 **In Re** ) **Chapter 7 Proceedings**  
10 **FRANKIE LYNN BRADSHAW,** ) **Case No. BR-05-24647-PHX-CGC**  
11 ) **Debtor.** ) **Adversary No. 06-00245**  
12 \_\_\_\_\_ )  
13 **DAVID S. EDMONDSON,** )  
14 ) **Plaintiff,** ) **UNDER ADVISEMENT RE:**  
15 **v.** ) **MOTION FOR SUMMARY**  
16 **FRANKIE LYNN BRADSHAW,** ) **JUDGMENT**  
17 **Defendant.** )  
18 \_\_\_\_\_ )

19 Before the Court is Plaintiff David Edmondson's partial motion for summary judgment  
20 regarding the issue of whether an attorneys' fee judgment against Defendant Frankie Bradshaw from  
21 the state court is excepted from discharge under 11 U.S.C. section 523(a)(5). After hearing oral  
22 argument on August 7, 2007, the Court ordered the parties to file post-hearing briefs to provide this  
23 Court with the transcript from the state court proceedings involving the attorneys' fee award. That  
24 having now been done, the matter is ripe for decision.

25 To be brief, the parties have been involved in a hotly contested child custody proceeding  
26 since 2001. During these proceedings, the parties battled over custody of their minor child,  
27 parenting time, and child support, *inter alia*. Subsequently, Plaintiff sought \$47,688.09 in attorneys'  
28 fees from Defendant. After a hearing on the matter, the state court awarded Plaintiff \$11,917.22 in  
fees. It is this judgment from which Defendant seeks to be discharged.

1 In awarding these fees, the state court properly focused on two factors, as required under  
2 Arizona Revised Statute section 25-324: 1) The financial resources of both parties; and 2) The  
3 reasonableness of the parties' positions throughout the proceedings. The Ninth Circuit has  
4 recognized that a presumption exists that fees awarded under this statute in matters involving child  
5 custody or child support are considered in the nature of child support unless the record reflects  
6 otherwise. See *In re Change*, 163 F.3d 1138, 1141 (9<sup>th</sup> Cir. 1998); *In re Catlow*, 663 F.2d 960 (9<sup>th</sup>  
7 Cir. 1981); *In re Jarski*, 301 B.R. 342, 347 (Bankr. D. Ariz. 2003). As was stated by court in *Jarski*,

8 With Arizona's statutory requirement that custody disputes be resolved in the "best  
9 interest of the child," and that any award of attorney's fees must be based upon  
10 consideration of "the financial resources of both parties, and the reasonableness of  
11 the position each party has taken" in the child custody dispute, it would take a strong  
12 showing by the Debtor to demonstrate that an award of attorneys fees was intended  
13 to be, or in fact was, something other than in the nature of support for the child.  
14 Perhaps such a strong showing could be made if the fees were awarded purely as a  
15 sanction."


16 Clearly the state court was troubled by the unreasonable positions taken by Defendant  
17 throughout the proceedings. However, the record does not strongly support a finding here, as the  
18 court stated in *Jarski*, that the fees were awarded *purely* as a sanction. As required, the court  
19 considered the financial positions of the parties and expressly calculated the fee award based on the  
20 parties related earning percentage – 75% by Plaintiff and 25% by Defendant—the same type of  
21 calculation that would be done in determining child support. As the court stated, it didn't "want to  
22 overburden" Defendant considering she had limited financial resources. Generally, a sanction is  
23 intended to be a burden or a means of punishment. The court also repeatedly pointed out that  
24 Defendant's unreasonable positions were contrary to the welfare of her child and that the attorney's  
25 fees incurred could have been better spent on the child than on this battle, further highlighting that  
26 the underlying issue was always the child's best interests.

27 For these reasons, the Court grants Plaintiff's partial motion for summary judgment and  
28 concludes that the attorney's fee judgment is nondischargeable. Counsel for Plaintiff is to lodge a  
form of order consistent with these findings for the Court's signature.

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So ordered.

DATED: August 24, 2007

  
CHARLES G. CHASE II  
United States Bankruptcy Judge

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